

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

**CLARA S. MITCHELL, as Personal Representative
of Bobby Mitchell, dec., et al.**

Plaintiff,

v.

CIVIL ACTION NO. 3:05cv1210-B

DEBBIE A. SWEET,

Defendant,

**PLAINTIFF'S RESPONSE TO "STATE FARM AUTOMOBILE INSURANCE
COMPANY'S MOTION TO JOIN SECRETARY OF THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES AS A REAL PARTY OF INTEREST OR AS AN
INDISPENSABLE PARTY"**

COMES NOW the plaintiff, Clara S. Mitchell, as the personal representative of Bobby L. Mitchell, deceased, and responds to "State Farm Automobile Insurance Company's Motion to Join Secretary of the Department of Health and Human Services as a Real Party of Interest or as an Indispensable Party", as follows:

1. Under F.R.C.P Rule 19(a)(2) the Secretary of the Department of Health and Human Services would be a "person [who] **claims** an interest relating to the subject of the action and is so situated that the disposition of the action and the person's absence may . . . (ii) leave any of the persons already party subject to a substantial risk of incurring, double, multiple, or otherwise inconsistent obligations by reason of the claimed interest." Furthermore, Rule 19(a) provides that "if the person has not been so joined, the court **shall** order that the person be made a party." [emphasis added].

2. While plaintiff denies that Medicare has a valid interest in the proceeds of the wrongful death settlement under Alabama law in this action, it appears that joinder of the Secretary is mandatory under Rule 19 because Medicare **claims** in interest in the proceeds of the settlement of the wrongful death claim. Furthermore, the defendant's are exposed to potential double obligations as a result of Medicare's claim. Therefore, plaintiff believes that the issue of whether Medicare has any interest in the proceeds of the settlement must be decided after the Secretary has been properly joined to this action as a party under F.R.C.P. Rule 19.

For the reasons stated above, plaintiff does not object to the joinder of the Secretary of the Department of Health and Human Services.

Respectfully submitted,

/s/Roger L. Lucas
ROGER L. LUCAS
AL. Bar Id: ASB 2555 S80R

OF COUNSEL:

LUCAS, PETWAY, TUCKER & WASH, P.C.
Two Chase Corporate Drive, Suite 460
Birmingham, AL 35242
(205) 733-1595 - phone
(205) 733-8683 - fax

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of December 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Hunter C. Carroll, Esq.
Stockham, Carroll & Smith, P.C.
2204 Lakeshore Drive, Suite 114
Birmingham, AL 35209
hcc@stockhampcc.com

Stanley A. Martin, Esq.
S. Allen Martin, Jr., Esq.
P.O. Box 2526
Opelika, AL 36803-2526

/s/ROGER L. LUCAS
Roger L. Lucas
Lucas, Wash, Petway, Tucker
& Stephens, P.C.
Two Chase Corporate Drive
Suite 460
Birmingham, AL 35244
Ph: (205) 733-1595
Fax: (205) 733-8683
rucas@lawpc.com
ASB 2555 S80-R